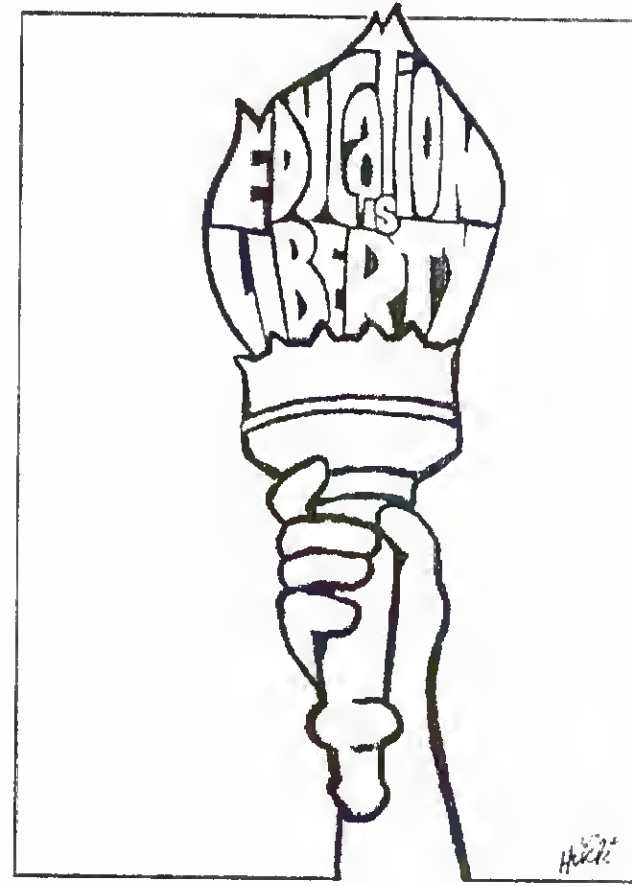


# Raise Your Voice:

A teacher's guide to the first amendment rights in and out of the classroom



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created by Liesl Buechler

Purpose of this book:

This book was created as a part of an activism project that began as a part of a class I took called Literacy in a Global Social Justice Perspective. The intended audience is teachers and activists that are interested in learning more about teachers' civil rights. This book is intended to help teachers to be empowered to know their rights so that they can ensure the future protection of them, especially in a time of "high stakes teaching".

Liesl Buechler

Special Thanks:

Prof. Steve Gunn

Prof. Rebecca Rogers

LSJTRG

## References

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- 2 [http://www.archives.gov/national-archives-experience/charters/bill\\_of\\_rights\\_transcript.html](http://www.archives.gov/national-archives-experience/charters/bill_of_rights_transcript.html)
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- 7 Donehower, R.W. (2003) "Boring Lessons: Defining the Limits of a Teacher's First Amendment Right to Speak Through the Curriculum". *Michigan Law Review* vol. 102, 517-541.
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- 10 <http://www.borg.com/~rjgtoons/images/ed8.gif>
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## National Resources

ACLU

[www.aclu.org](http://www.aclu.org)

Teacher Networks

NYC: [www.nycore.org](http://www.nycore.org)

Chicago: [www.teachersforjustice.org/](http://www.teachersforjustice.org/)

San Francisco: [www.t4sj.org](http://www.t4sj.org)

Rethinking Schools

<http://www.rethinkingschools.org>

Radical Teacher

[www.radicalteacher.org](http://www.radicalteacher.org)

AFT

<http://www.aft.org>

NEA

<http://www.nea.org>

Fair Test

<http://www.fairtest.org>

Indy Media

<http://www.indymedia.org>

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United States Constitution  
Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.<sup>2</sup>

**Community Resources**

Literacy for Social Justice Teacher Research Group  
[www.artsci.wustl.edu/~mrmosley/lstjtrg/](http://www.artsci.wustl.edu/~mrmosley/lstjtrg/)

AFT Local 420  
<http://www.stltu.org/>

MNEA  
<http://www.mnea.org/>

MSTA  
<http://www.msta.org/>

Jobs with Justice  
<http://www.stl-jwj.org/>

Eastern MO ACLU  
<http://www.aclu-em.org/>

## What can I do in my community?

Join a teacher network

Contact other activists groups

Talk with local politicians and leaders

Contact alternative media outlets

Indy Media

<http://www.stlimc.org/>

Confluence

<http://www.stlconfluence.org/>

St. Louis Schools Watch

<http://slswatch.pubdef.net/>

Public Defense Weekly

<http://pubdefweekly.com/>



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**NEA:National Education Association**  
**Code of Ethics of the Education Profession**  
**Preamble**

*The educator, believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nurture of the democratic principles. Essential to these goals is the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. The educator accepts the responsibility to adhere to the highest ethical standards. The educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, of parents, and of the members of the community provides the incentive to attain and maintain the highest possible degree of ethical conduct. The Code of Ethics of the Education Profession indicates the aspiration of all educators and provides standards by which to judge conduct.*

*The remedies specified by the NEA and/or its affiliates for the violation of any provision of this Code shall be exclusive and no such provision shall be enforceable in any form other than the one specifically designated by the NEA or its affiliates.*

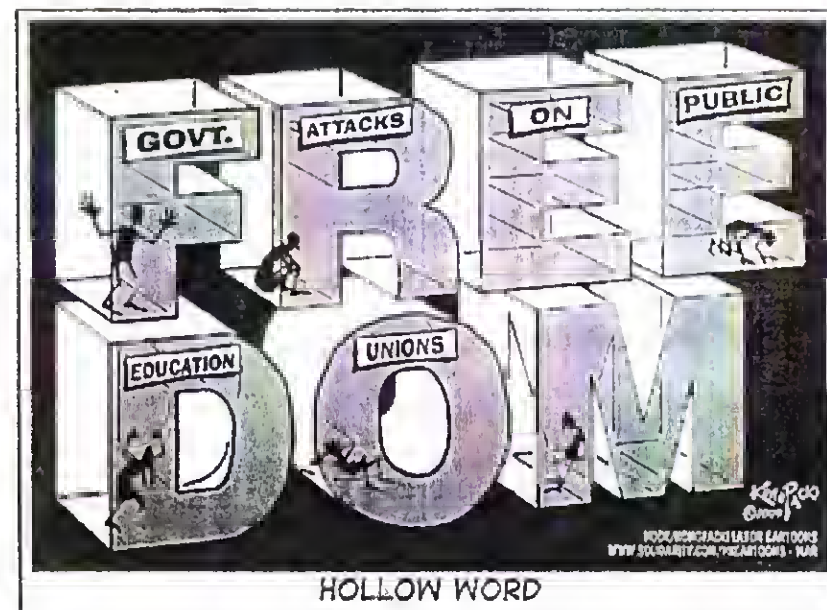
**PRINCIPLE I**

**Commitment to the Student**

The educator strives to help each student realize his or her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals.

In fulfillment of the obligation to the student, the educator-

1. Shall not unreasonably restrain the student from independent action in the pursuit of learning.
2. Shall not unreasonably deny the student's access to varying points of view.
3. Shall not deliberately suppress or distort subject matter relevant to the student's progress.
4. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.
5. Shall not intentionally expose the student to embarrassment or disparagement.
6. Shall not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background, or sexual orientation, unfairly--





## What can I do with other teachers?

Join your local union

Begin discussion groups in your school

Involve parents in study groups

Build up allies with in your school and district

Get involved with school and district committees

Get involved with curriculum development in your school

- a. Exclude any student from participation in any program
- b. Deny benefits to any student
- c. Grant any advantage to any student
  7. Shall not use professional relationships with students for private advantage.
  8. Shall not disclose information about students obtained in the course of professional service unless disclosure serves a compelling professional purpose or is required by law.

### **PRINCIPLE II**

#### **Commitment to the Profession**

The education profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service. In the belief that the quality of the services of the education profession directly influences the nation and its citizens, the educator shall exert every effort to raise professional standards, to promote a climate that encourages the exercise of professional judgment, to achieve conditions that attract persons worthy of the trust to careers in education, and to assist in preventing the practice of the profession by unqualified persons.

In fulfillment of the obligation to the profession, the educator--

1. Shall not in an application for a professional position deliberately make a false statement or fail to disclose a material fact related to competency and qualifications.
2. Shall not misrepresent his/her professional qualifications.
3. Shall not assist any entry into the profession of a person known to be unqualified in respect to character, education, or other relevant attribute.
4. Shall not knowingly make a false statement concerning the qualifications of a candidate for a professional position.
5. Shall not assist a noneducator in the unauthorized practice of teaching.
6. Shall not disclose information about colleagues obtained in the course of professional service unless disclosure serves a compelling professional purpose or is required by law.
7. Shall not knowingly make false or malicious statements about a colleague.
8. Shall not accept any gratuity, gift, or favor that might impair or appear to influence professional decisions or action.

*Adopted by the NEA 1975 Representative Assembly* <sup>4</sup>

## Teachers' Stories

Judge Rules Teachers Have No Free Speech Rights in Class

By Matthew Rothschild

*The Progressive* -- March 24, 2006

Here's an update on Deb Mayer, the teacher who said her contract was not renewed because she answered a student's question about whether she would participate in a demonstration for peace. (See "Teacher Awaits Day in Court.")

Her case involves an incident that occurred on January 10, 2003, at Clear Creek Elementary School in Bloomington, Indiana.

The students were reading an article in *Time for Kids* about peace protests. She responded to the student's question by saying she sometimes honks for peace and that it's important to seek out peaceful solutions both on the playground and in society. Afterwards, the parents of one of the students got angry and insisted that she not speak about peace again in the classroom. Mayer's principal so ordered her.

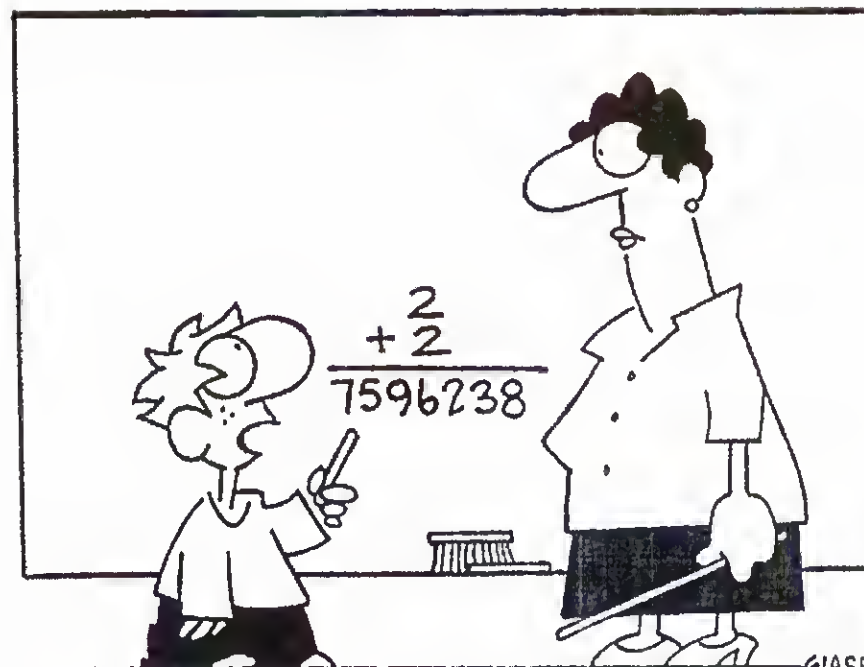
When the school district did not renew Mayer's contract at the end of the semester, she sued for wrongful termination and for violation of her First Amendment rights.

On March 10, Judge Sarah Evans Barker dismissed Mayer's case, granting summary judgment to the defendants.

The judge said the school district was within its rights to terminate Mayer because of various complaints it received from parents about her teaching performance.

But beyond that, Judge Barker ruled that "teachers, including Ms. Mayer, do not have a right under the First Amendment to

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**"In an increasingly complex world, sometimes  
old questions require new answers."**



## What can I do in my classroom?

Use democratic principles for decision making

Listen to students ideas

Create open dialogue for all students

Foster parent involvement in the classroom

Communicate with parents

Teach parents about your pedagogy

Share your teaching philosophy

Create a lending library for parents

Inform your principal and other teachers when you will be discussing 'controversial' topics in your classroom

express their opinions with their students during the instructional period."

The judge ruled that "school officials are free to adopt regulations prohibiting classroom discussion of the war," and that "the fact that Ms. Mayer's January 10, 2003, comments were made prior to any prohibitions by school officials does not establish that she had a First Amendment right to make those comments in the first place." The judge also implied that Mayer, by making her comments, was attempting to "arrogate control of the curricula."

And the judge gave enormous leeway to school districts to limit teachers' speech in the classroom.

"Whatever the school board adopts as policy regarding what teachers are permitted to express in terms of their opinions on current events during the instructional period, that policy controls, and there is no First Amendment right permitting teachers to do otherwise," Judge Barker wrote.

The judge "has simply gotten the law wrong," says Michael Schultz, Mayer's attorney. "There is a long line of authority that teachers do not check their First Amendment rights at the schoolhouse door. And, in this case, Ms. Mayer was asked for her opinion in the context of teaching the approved curriculum. She only gave her opinion in a very appropriate, limited way and then related the issue to the students' lives (i.e., on the playground), and then moved on in the lesson. If giving one's opinion in response to a legitimate (and predictable) question is fair game for making a decision to terminate a teacher, who will want to teach? And, more importantly, what impact will this state of affairs have on the quality of instruction?"

Mayer says she's going to appeal. "It's too important not to," she says. "Teachers everywhere are at risk because of what this judge has said."

## Freedom of Speech

School Law is comprised on many local, state and national laws, statutes and policies. This makes for a huge amount of material to understand in order to determine the extent of teachers' rights. Below are just some of the major court cases that have defined the limits on teachers' freedom of speech.

"There are circumstances when the school board may impose requirements and restrictions on its teachers that government in general could not impose on the citizenry"<sup>5</sup>

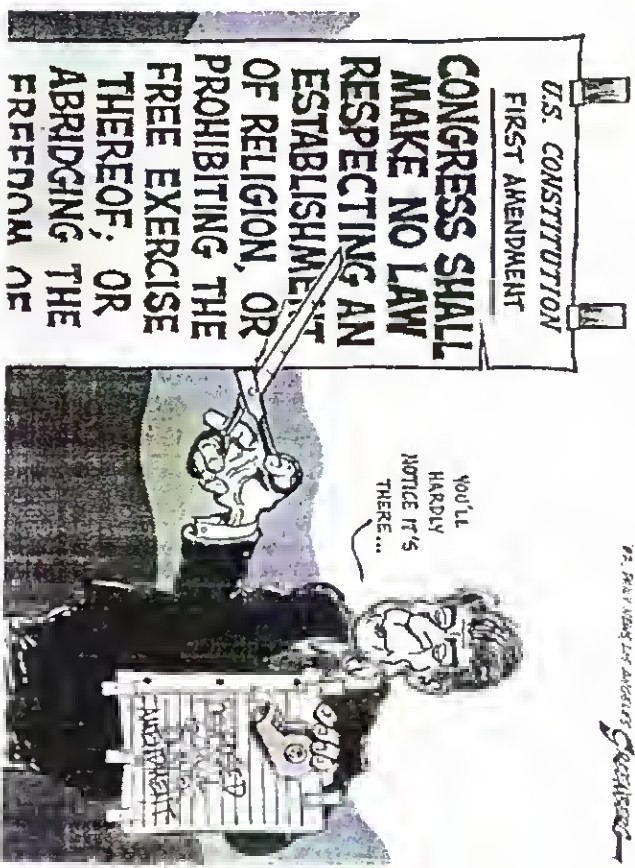
### **Pickering v Board of Education**

"The Supreme Court decision, delivered by Justice Thurgood Marshall, held conclusively that teachers do share with citizens the right to speak out on public issues. If a teacher's statements are substantially accurate, they provide no grounds for dismissal unless school officials can prove they caused disruption."<sup>6</sup>

The Pickering case also stipulates that speech must be as a 'public citizen' not as an employee of the state, so this has limited protections for classroom speech.

"Courts must then balance "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."<sup>7</sup>

passed out in front of the school. I spoke at school board meetings and other public events about my case. We also had a demonstration in front of CPS headquarters. My hearing was attended by several dozen people. We put on a good legal case and had supporting witnesses. The student's guardian verified my claim that she knew where her daughter was going and had given her permission. We made the point in the hearing that the real reason I was being dismissed was for my communist politics. Although the CPS lawyer denied this, the evidence spoke for itself. There were articles in several alternative newspapers, but none in the mainstream press. The hearing officer ruled in my favor and the school board then returned me to my job.



## An Interview with a teacher

I am a math teacher working for Chicago Public Schools. In January of 2000, I was suspended without pay for 14 months. There were various charges initially, but the one that CPS brought to my hearing was that I endangered a student by bringing her to an anti-Klan rally. The rally was on a Saturday, and I had the permission of the girl's guardian to take her. I won my job back with full back pay and later sued for unlawful termination of employment and won a settlement. I am now back teaching at the school from which I was originally removed. Although the charges were as described above, the real issue is that I am an open communist. Many of the charges which were dropped had to do with things such as "unauthorized literature distribution".

From your experience what advice do you have for other teachers?

Stand up for what you know is right. Students and other teachers will support you if your cause is just. It is important that left-wing ideas are heard in the schools--we can't leave politics to those in power. Test the limits. Don't automatically refrain from doing something just because you may get in trouble. On the other hand, involve students, parents and other teachers in what you are doing--don't be a lone wolf.

How were you able to regain your position?

I regained my position through a combination of political and legal efforts. The PLP, to which I belong, held many political/fund raising events. These events were well attended and we raised close to \$10,000 from supporters. I also kept students and teachers abreast of the situation through leaflets

## *Tinker v Des Moines: "A market place of ideas"*

"Students may not be regarded as closed-circuit recipients of only what the state chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved" ...the classroom was peculiarly the "marketplace of ideas" and that the nation's future depends on leaders identified through "wide exposure to the robust *exchange of ideas* which discover truth but of a multitude of tongues, rather than through any kind of authoritative selections." Teachers have the right to take positions on political or social issues and to express their opinions in school. Furthermore, school authorities cannot force teachers to take positions or participate in activities that conflict with their convictions.... In the classroom, a teacher must strive to *present alternative perspectives* rather than to sell a particular perspective." <sup>6</sup>

In order to ensure that a teacher's words are taken from his or her position as a private citizen speaking about public concern, Nathan Essex suggests "**a teacher should preface [public] comments by indicating that he or she is speaking as a private citizen rather than an employee of the board.**" <sup>8</sup>



## Freedom of Association and Political Activity

Can teachers voice political affiliations inside or outside of the classroom? Can a teacher be a member of a group that a board of education disagrees with? Can a teacher be politically active in the community? Can she or he attend anti-war rallies without fear of retribution from the school board?

The courts have changed their views on this topic over the past 60 years. Until 1967 with the case *Keyishian v. Board of Regents*, school districts could disqualify teachers if they were members of a group that "advocates, advises or teaches" governmental overthrow by force or violence."<sup>5</sup>

Teachers were often asked to provide a list of organizational affiliations to their district each year. These lists could be used for reason to fire a teacher. Teachers have also been asked to give oaths to the district and included in many of these oaths were statements about past or present membership in "subversive groups."<sup>5</sup>

"The supreme court has made it clear that public employees generally may not be dismissed, punished, or rewarded solely because of their party affiliation or political beliefs."<sup>5</sup>

### *Elfbrandt v. Russe!*

"Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as a citizen or as a public employee"<sup>8</sup>

US Public Law No: 103-94

"It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation."

## *Is Missouri Statute 168.130 unconstitutional?*

**Teachers not to participate in management of school board election, campaign.**

MO 168.130. No teacher shall take part in the management of the campaign for the election or defeat of members of a board of education by which he is employed. Any teacher who violates the provisions of this section shall be subject to termination of his employment by the district with the right of a hearing and appeal as heretofore provided.  
(L. 1969 P. 275 § 168.116)

### **Political activities by state employees permitted--prohibited activities.**

MO 36.155.

1. An employee may take part in the activities of political parties and political campaigns.
2. An employee may not:

- (1) Use the employee's official authority or influence for the purpose of interfering with the results of an election;
- (2) Knowingly solicit, accept or receive a political contribution from any person who is a subordinate employee of the employee;
- (3) Run for the nomination, or as a candidate for election, to a partisan political office; or
- (4) Knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation, grant, contract, ruling, license, permit or certificate pending before the employing department of such employee or is the subject of, or a participant in, an ongoing audit, investigation or enforcement action being carried out by the employing department of such employee.

3. An employee retains the right to vote as the employee chooses and to express the employee's opinion on political subjects and candidates.

(L. 1998 H.B. 927)